JD–25-05
Lanham, Maryland

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMCAST OF MARYLAND, INC.

and

Cases 5-CA-31652
5-CA-31791
5-CA-31905
5-CA-31906
5-CA-31909

TEAMSTERS LOCAL UNION # 639, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

JONNIE HARRISON,
An Individual

RONNIE LEE MYERS,
An Individual

MARK ANTHONY EDMONDS,
An Individual

ANDREW HENRY WILLIAMS, II,
An Individual

Elicia L. Marsh-Watts and Stephanie Cotilla, Esqs.
for the General Counsel.
James Sullivan, Christopher Rusek, and
Michael T. Kenny, Esqs., (Klett, Rooney,
Lieber & Schorling, P.C.), of Philadelphia, Pennsylvania,
for the Respondent.

DECISION

Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Washington, D.C., on August 30, 2004 and on September 15-24, 2004. The consolidated complaint issued on July 30, 2004, upon charges filed on December 23, 2003 in Case 5-CA-31652 by Teamsters Local Union # 639, a/w International Brotherhood of Teamsters, AFL-CIO, (the Union), in Case 5-CA-31791 filed on March 8, 2004 by Jonnie Harrison, in Case 5-CA-31905 filed on April 23, 2004, by Ronnie Lee Myers, in Case 5-CA-31906 filed on April 23, 2004, by Mark Anthony Edmonds and in Case 5-CA-31909 filed on April 29, 2004, by Andrew Henry Williams I.[1] The complaint alleges that the Respondent, Comcast of Maryland, Inc.[2] violated Section 8(a)(1) and

[1] The correct name of the Charging Party was Andrew Henry Williams I (Tr. 980).

[2] The parties stipulated to the Respondent's proper name as Comcast of Maryland, Inc. (Tr. 97).

(3) of the National Labor Relations Act (the Act). More specifically, the complaint alleges, as independent violations of Section 8(a)(1), that the Respondent coercively interrogated employees about their union activities, made coercive statements to the employees about their union activities, threatened employees about their union support, and created the impression that the employees' union activities were under surveillance. As violations of Section 8(a)(3) and (1) of the Act, the complaint alleges that the discharges of four employees, Sharon Brown, Jonnie Harrison, Mark Anthony Edmonds, and Andrew Henry Williams I, was motivated by union considerations, and that the Company failed to promote Ronnie Lee Myers, because of his union activities.

The Respondent filed a timely answer, admitting the jurisdictional aspects of the complaint and denying the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, Comcast of Maryland, Inc., is a Colorado corporation, engaged in the business of providing broadband, cable television and internet services, at its office and place of business at 9609 Annapolis Road, Lanham, Maryland. With gross revenues in excess of $100,000 directly from points located outside the State of Maryland, and with services performed in its business operations valued in excess of $50,000 in states other than the State of Maryland, the Respondent is admittedly an employer engaged in commerce within meaning of Section 2(2), (6), and (7) of the Act.

The Union, International Brotherhood of Teamsters, Local 639, is admittedly a labor organization within the meaning of Section 2(5) of the Act.

II. Background

Comcast of Maryland Inc. maintains several facilities in Maryland to provide its customers with cable service in the Prince George's County area. The technical center is located on Annapolis Road in Lanham, Maryland. Lelia True served as the vice president and general manager for the Prince Georges County operation. She reported to a regional vice president for the District of Columbia metropolitan area.

In the fall of 2002, the Union, Teamsters Local 639, filed a petition for representation on behalf of all technicians, warehouse, and collection employees employed at the Lanham facility (GC Exh. 4). The Company and the Union reached a stipulated election agreement on November 27, 2002, for an election to be held on December 19, 2002 (GC Exh. 6). After the Union withdrew the petition, the Company held a party. According to Lelia True, the purpose was to build spirit and cohesion after a decisive campaign. The Company had waged a vigorous antiunion campaign during that period, holding frequent, almost daily, employee meetings and providing the employees with antiunion literature (GC Exh. 5). The Respondent also conducted leadership meetings and held straw polls or meetings where we would discuss whether or not employees were for or against the Union (Tr. 109).

In 2003, the Union made another attempt to organize the employees at the Lanham facility. In addition to the various classifications of technicians, the petition included control clerks, lead

clerks, check-in clerks, dispatchers, and others, affecting approximately 140 employees. The petition was filed on October 3, 2003 (GC Exh. 7). The parties reached a stipulated election agreement for the election to be held on November 13, 2003 (GC Exh. 9). Again the Company held numerous employee meetings concerning the union campaign and management meetings where it conducted straw polls among supervisors to ascertain the union sentiments of the employees. For example, a straw poll meeting was held on November 6, 2003, and a 24 Hour Speech was held on November 11, 2003. During several months preceding the election, supervisors were instructed to make sure that their people attended employee meetings, which were considered to be mandatory (GC Exh. 8). Several employees openly expressed their support of the Union during these meetings. Supervisors were encouraged to attend management meetings, where they were expected to identify individual employees as to whether they were for or against the Union. Pursuant to a stipulation between the parties, employees who were identified as union supporters were, Sharon Brown in the check-in department, as well as technicians Ronnie Lee Myers, Andrew Henry Williams, Lewis Estep, and Andrew Simms. The Union lost the election by a large margin.

Sharon Brown was one of the two employees in the check-in department who was discharged effective September 18, 2003, ostensibly for falsifying company bank deposit slips. Andrew Henry Williams was one of the two technicians discharged on March 24, 2004, allegedly for falsifying blind audit reports. The Company failed to promote Ronnie Lee Myers to a lead technician position, an opening posted by the Company in January 2004.

The Technicians and the Blind Audit Program

Comcast distributes its cable service from its distribution network at the main site to the field, by first feeding its cable under ground to about 500 nodes, located in various locations in the County. From there, the cable is connected to pedestals. Pedestals, containing as many as 15 to 20 lines, run to the customers' homes. Technicians install, repair, maintain, and service the broadband cable services. Technicians are classified as maintenance technicians, head end technicians and construction technicians. The Respondent also employs communications technicians (comm techs), collection technicians, and quality control and audit technicians. Ordinarily, technicians work in the field with work orders, which specify the type of service ordered by a customer. The work orders show the customer's address and phone number and a tag number which identifies the cable leading to a customer's home.

The Company initiated a program in early 2003, known as the Blind Audit Procedure (GC Exh. 20). According to the company memorandum, dated March 3, 2003, its stated purpose was to validate the accuracy of the Prince George's subscriber base to the billing system and to identify and disconnect illegals, that is, nonpaying customers. At an employee meeting in April, 2003, Harry Auld, director of operations, made a power point presentation directed at field technicians to conduct blind audits to locate customers who were receiving cable service without paying for it. Once nonpaying customers or customers who were illegally hooked up to the cable system were identified, they were given the opportunity to become legitimate, paid subscribers. Their lines were disconnected if they refused to become paying customers. Auld testified that the program was important to the Company, as a way to generate additional revenue and capture additional subscribers, and that $300,000 in additional revenue was generated and just over 500 new subscribers had been gained since the program began. Auld announced at the meeting that the new assignment for the technicians required them to audit eight active cable accounts per day. In addition, they were required to record the tag numbers and addresses of eight active cable accounts on a blind audit worksheet. Auld testified that he left it up to the technical managers, Rodney Brooks and Eric Smith, to decide when the program would start.

As part of their regular duties, technicians were required to bring their completed worksheets to the office at the end of the day and turn them in to their direct supervisors, who submitted them to the check-in department. Employees in the check-in department entered into the system or database the tag numbers, the technician's number, dates on the worksheet and the address of the property to verify whether the accounts were legal or illegal connections. All communications technicians, collections technicians, and quality control and audit technicians were required to comply with the blind audit program in addition to their regular tasks. Other classification of technicians, such as maintenance, head end, and construction technicians were exempted from the blind audit program.

The technician's direct supervisors were responsible for their employees' compliance with the program, and to assure that the worksheets reflected the street address, the tag number, the account number, and whether the tag is active. A record was also made whether the location was a single dwelling unit (SDU), a townhouse (TH), or a multi-dwelling unit (MDU), whether the cable was overhead (OVRH), or underground (UNDGR).

The Check-In Department

The employees in the check-in department were responsible for processing the daily receipts received from the technicians. The check-in department reviewed and verified the amounts of money dropped off by the technicians. The information was entered into the data system. Check-in employees counted the money, prepared deposit slips which indicated whether the receipts were made in cash, by check or by money order, and initialed the deposit slip.

For several years it has been company policy, that employees in the check-in department and in the various other departments handling money, such as the front counter department, accounts receivable and accounts payable, were required to have the deposit slips verified and initialed by another employee in the same department. After the verification process, the money and deposit slips were placed in a deposit bag with the receipts, and dropped in a company safe. According to Ann Wood, business operations manager, who supervised the employees in the check-in department, the Respondent has required since 2000 that a second check-in employee verify the deposit amounts, and place her initials on the deposit slips. Harry Auld also understood the verification policy to require that two initials be placed on a deposit.

The employees in the check-in department were, Sharon Brown, Jonnie Harrison, Dawn Perry, and Joy Campbell. The employees had their separate desks, facing the wall. Brown and Harrison were seated next to each other at adjoining desks, and Campbell and Perry sat at adjoining desks facing the opposite wall. Angela Kyler, network operations manager, supervised the check-in employees from approximately 2000 to October 2002, and Ann Wood, business operations manager, supervised the employees from approximately October 22, 2002 to February or March 2004.

In early 2002, when the Respondent conducted an annual audit, Kyler, the supervisor of the check-in department at the time, reminded her employees that they should make sure to have two initials on their deposit slips. Kyler testified that verification had always been company policy, and that she was responsible for the policy requiring two initials on deposit slips. Wood and Auld testified that the verification and two initials policy had been in effect since 2000. Auld was responsible for the financial operations of the system and the overall responsibility for the check-In department.

In spite of these requirements, the employees in the check-in department rarely followed the procedure, they generally did not verify their deposits, nor have another person initial their deposit slips. And supervisors did not enforce the company policy, because the Respondent had not experienced any discrepancies or money shortages, so that there was no incentive to have deposits verified by a second employee.

In September 2003, the situation suddenly changed, when the Respondent discharged two of the four employees in the check-in department, Jonnie Harrison and Sharon Brown. The Respondent's reason for the terminations was falsifying documents, that is, these two employees had placed the initials of their coworkers on their deposit slips without actually verifying the deposit.

III. The Alleged Violations

The General Counsel argues that during the 2003 union campaign, the Respondent threatened employees, because of the union support, coercively interrogated employees about their union activities, offered employees benefits to make the Union go away, and created the impression that the employees' union activities were under surveillance. In addition, it is alleged that employees who were union activists were discharged for pretextual reasons, and that one union supporter was not promoted, because of union considerations. The Respondent argues that none of the allegations have been substantiated.

Independent Section 8(a)(1) Violations

The complaint first alleges that in August 2003, Rodney Brooks, technical operations manager, coerced employees about their union activities and created the impression that the employees' union activities were under surveillance. In this regard, the record contains the testimony of David Pope, a service technician. Pope went to Brooks' office sometime in August 2003, to inquire about some tools or equipment when a conversation ensued about the Union. Pope was a union supporter who had supported the union campaign by attending meetings, passing out union literature, and speaking up in favor of the Union at employee meetings. During the conversation in Brook's office, Pope expressed his concern about the working conditions for technicians, such as the point system and the audits. Brooks replied that he was upset and angry that the employees were doing this again, presumably organizing, and that he had an open door policy where issues could have been resolved. Pope testified as follows about Brooks' additional comments (Tr.1156):

> He also said, I knew about the meeting, and my superior[3] has told me to go up there and kick butt and take names because guys were out of the area. He said, I chose not to do that.

Based on demeanor, his forthright and honest manner of testifying, I credit Pope's testimony. Moreover, Pope is no longer employed at the Company and had nothing to loose or gain by his testimony. Brooks' testimony, on the other hand, appeared self-serving and designed to protect his reference to his supervisor, True. I find that the statement, made by a highly ranked supervisor to an employee, that the Respondent knew of the union meeting at Landover Mall unlawful, particularly during an ongoing union campaign, where the supervisor

[3] The word security in the record is corrected to read superior, per motion by the General Counsel (GC Brief, p. 34).

indicated that he was directed to take names for possible adverse action against them. Statements by management during a union campaign that the Respondent knew about union meetings create the unlawful impression of surveillance. *Ichikoh Mfg.,* 312 NLRB 1022 (1993); *Jordan Marsh Stores Corp*., 317 NLRB 460 (1995). Brooks' statements that he was mad or angry that employees were trying again to organize, and that he had been instructed to go up there and kick butt and take names, were coercive, and unlawful in violation of Section 8(a)(1). *Wilker Bros*. Co., 236 NLRB 1371, 1377 (1978).

The complaint alleges that in August 2003, John Molvin, technical supervisor, coerced employees by telling them that they need not talk to union supporters. The record shows that on August 3 or 4, 2003, Sharon Brown was in the Company's gazebo taking a smoke break and talking to Ronnie Myers, a technician and known union activist. Myers told her about a union meeting and asked whether she would attend. Molvin was inside the office building looking out the door. He called her by name and said, you shouldn't be out here with Ronnie Myers. He's bad news. Molvin told her that she did not have to talk to Myers. Brown's testimony in this regard, corroborated by the testimony of Myers, was uncontroverted. The Respondent's instructions to employees not to talk to union adherents are a clear violation of Section 8(a)(1). *World Fashion,* 320 NLRB 922, 931 (1996).

The complaint alleges several violations involving Kevin Allen, collections supervisor, including creating the impression of unlawful surveillance and asking employees why they thought the Union was necessary. Two of the Respondent's technicians testified about Allen's methods of interrogating employees about their union sentiments. Marty Resper, a collection technician, recalled that on a Thursday in August 2003, he was called in to a private room at the Lanham office by Allen. Allen initially admonished him not to lie. Allen said that he knew that the employees had met at the Red Lobster Inn. He then asked Resper why he wanted the Union. Resper responded that he wanted a union for job security. Allen told him that he did not need a union. Allen also said that his superiors, Harry Auld and Ann Wood, expected him to question every employee and to report back to them. Resper observed that Allen was taking notes of their conversation, and he noticed a pad that contained the names of other employees. When the meeting was over, Allen directed him to have the next technician, Robert Pickett, come to his office.

Pickett's testimony corroborated Resper's experience with Allen. According to Pickett, Allen informed him that Auld and Wood wanted him [Allen] to meet with employees to find out their union sentiment and how they would vote in the election. Pickett also observed Allen taking notes of their conversation. In response to Allen's question, whether he would support the Union, Pickett replied that he would now vote against the Union, because in his present job as a collections technician he did not have the same concerns as he did when he was a service technician. When the meeting ended, Allen instructed him to send in the next technician.

Resper returned to Allen's office on a Monday a week later to turn in his paperwork, when he noticed the same pad from the previous interview lying on Allen's desk. Allen recognized his name on the pad and decided to make copies of the relevant pages. He returned and placed the pad back on Allen's desk.

The Respondent argues that Resper's conduct, the surreptitious removal of the notes, was dishonest, and that his testimony was unreliable. According to the Respondent, the pad did not reveal any interrogation notes, but that it was merely a summary of straw poll notes and a legitimate exercise by the Respondent's supervisors. I have examined the notes and find that they corroborate the substance of Resper's testimony (GC Exh. 25). Pickett's testimony corroborated Resper's version. I found nothing in their demeanor as witnesses which would

suggest that they were dishonest. Allen's testimony, on the other hand, was evasive and unreliable. When confronted with his notes, Allen was frequently unable to remember, and he vacillated in explaining how he had compiled these notes.

Clearly, a supervisor's conduct of interrogating employees as to why they needed a union, is considered coercive, particularly in combination with interrogations designed to elicit their union sentiments. In addition, Allen created the impression of unlawful surveillance by disclosing that he knew about the union meeting, and that he had questioned other employees as to why they wanted a union.

The complaint next alleges violations of the Act, committed by Thomas Jefferson, vice president of human resources, by interrogating employees, threatening them with adverse consequences and more onerous working conditions, if they supported the Union, and threatening them that they should quit their jobs if they did not like working for the Respondent. The witnesses supporting these allegations were Andrew Williams and Ronnie Meyers. Williams testified about his meeting with Jefferson in November 2003 in the general manager's conference room. There, Jefferson questioned him about the Union, as follows (Tr. 958):

> And he kind of like questioned me, asking me what was wrong, why the guys want a union or third party representative again, and I replied and told that they probably wanted it because they don't have any benefits, wages, things of that nature.

Jefferson also said that he was the one to make a final decision in the Company, and if a union came in, they would not be able to speak to each other, but would have to go through the Union. He would make sure that employees would get the worst deal, the worst contract he could give. Jefferson further said that he could take away their current benefits, such as their courtesy account, internet service, as well as cable and phone service. Williams questioned whether the Company could take away benefits that are already in place. But Jefferson assured him that he would make sure that the employees would lose benefits, courtesy accounts and privileges to drive their trucks home.

Myers similarly testified, that Jefferson indicated that he would tighten the ropes and that things would get worse if the employees selected the Union. Jefferson repeatedly threatened, that he would make sure the employees would get a shitty contract. Some time after the election in November 2003, Jefferson spoke to Myers again about the defeat of the Union, saying, if you are that unhappy, you should leave. Jefferson referred to a severance package, and suggested that Myers could obtain an independent contractor's license and establish himself as an independent contractor. He offered the phone number of a friend in Florida who might be of assistance.

At the hearing, Jefferson denied threatening the employees, but he conceded that on October 27, 2003, he spoke privately with Williams following a meeting with the technicians. Based on demeanor, I credit the consistent testimony of the employee witnesses.

As alleged, the Respondent's conduct in this regard was unlawful in several respects, first, statements to union supporters that if they are unhappy, they should look for jobs elsewhere, is considered a threat. *McDaniel Ford,* 322 NLRB 956 (1997); *Kroger Co.,* 311 NLRB 1187 (1993). Second, statements which imply more onerous working conditions, or threats to take away benefits in retaliation for the employees' union support, violate the Act. *Cox Fire Protection*, 308 NLRB 793 (1992); *Severance Tool Industries*, 301 NLRB 1166 (1991). Third, coercive interrogations of employees about their union sympathies, including questioning

employees about their union sentiments accompanied by threats, has long been considered a violation of the Act. *Rossmore House*, 269 NLRB 1176 (1984).

The complaint also alleges that Brad Brash, technical supervisor, engaged in similar verbal misconduct by interrogating employees as to why they thought a union was important. Brash, Eric Smith, technical operations manager, and [David] Ken White, director of technical are also accused of threatening employees with various dire consequences, such as increased discipline, unspecified reprisals, or loss of benefits, because of the employees' union support.

The record shows that in October 2003, Supervisor Brash requested technical employee Mark Edmonds to attend a mandatory meeting at Applebee's restaurant to discuss the Union. Edmonds arrived at 1:30 p.m. in the afternoon and met with Jefferson, Brash and Smith. According to Edmonds, Jefferson asked him why the Union was so important. Edmonds answered that a union would be helpful with such issues as job security. At that point Brash said, that with a union there he would be fired if he is late, or for anything wrong that is it (Tr. 1076). At another meeting about the Union with Jefferson and Smith at Applebee's, employees Lewis Estep, Eric Garner and Edmonds were asked again about their reasons for the Union. Edmonds spoke up and stated that job security benefits and a health plan were important issues. Smith said that Edmonds better accept his year-end bonus and be comfortable, than wait for the Union and drag things out.

In November, shortly before the union election, employees Ronnie Myers, Curt Penelton, and Andrew Williams, had just attended another employer sponsored meeting about the union campaign in Mitchellville, Maryland. They were standing in the parking lot. Williams recalled the following conversation (Tr. p. 990):

> So by that time, Ken White walked up and he started talking to us and he made a statement telling us that we better be careful who we mess with in Comcast because Comcast has a lot of muscle.

Myers expressed his surprise and asked whether that was meant as a threat. White responded by saying again, "better be careful who you are messing with in Comcast because they have a lot of muscle." After that, White suggested that they should end the conversation and go on about their business, because they might have regrets about what was said. The employees promptly went to the human resources department to report the incident. White was subsequently told to apologize to the employees for his statements.

I find these factual accounts reported by witnesses, Edmonds, Williams and Myers, to be consistent and credible, and find that the comments by Brash and White were unlawful threats of increased discipline and unspecified reprisals for trying to get the Union in. *ITT Federal Services Corp*., 335 NLRB 998, 1003 (2001). Smith's remark at Applebee's did not rise to the level of an unlawful threat.

Myers testified about his frequent conversations about the Union in October or November 2003 with Robin [Burgess] Burgos, regional manager of human resources. He recalled meeting or speaking with her at least once during a week. In his words: "She, she would always say – okay, these guys really respect you, Ronnie, you know. Why don't you make it go away, you know. If you say you don't need a union, then they going to agree to that." According to Myers, she knew that he was vocal, that he did 95 percent of the talking at the meetings. She would ask what he wanted, saying, "Ron, you can make it all go away, you know, who do you want, what do you want" (Tr.1198). Myers testified that they would just laugh about it, that they joked about it, particularly when he jokingly asked for $50,000. They would

laugh together. Burgos, during her testimony, denied that she ever made promises of anything for Myers to abandon the union efforts.

Myers' testimony in this regard, particularly that Burgos made these remarks repeatedly, every week, for months, was exaggerated. His testimony implied that Burgos was not serious during her conversations with him, and that her remarks were made in jest. Under these circumstances, I dismiss the allegations.

The Discharges of Sharon Brown and Jonnie Harrison

On September 18, 2003, two of the four employees in the check-in department, Sharon Brown and Jonnie Harrison, were informed of their discharge. Their termination letters, dated September 18, 2003, state inter alia as follows (R. Exhs. 95, 96):

> As of September 18, 2003 your employment with Comcast has been terminated for falsification of company documents.
> On September 16, 2003, your supervisor discovered that deposit slips had been signed by you and also had the initials of your coworker.

The two employees in the check-in department were unlawfully discharged, according to the General Counsel, because the Respondent was motivated by antiunion animus, evidenced by the Respondent's discriminatory enforcement of a verification policy. According to the Respondent, the employees' misconduct amounted to falsification of records, a serious offense enumerated in the Comcast employee handbook (R. Exh. 4).

The Company has for several years maintained a policy of verifying deposit slips processed by the check-in clerks in the check-in department. The idea was for the employees in the various departments handling cash, including the check-in department, to have two initials on the deposits to signify that one employee had verified the accuracy of the coworker's deposits. Ordinarily, the check-in clerk counted the deposit of money, prepared a deposit slip with a date and a batch number, and initialed the slip before dropping it in the company safe. Ideally, the deposit would be verified and initialed by a second clerk before it is placed in the safe. The record, however, reveals that the verification process was rarely followed. Indeed, the Respondent states that clerks may not have always followed this procedure by having a second person verify each deposit slip (R. Br., p.5). The underlying reason was that the Respondent had never experienced any discrepancies in the handling of money deposits. Moreover, the department had experienced little turnover in recent years. The tenure of the four employees in the department ranged from 3 years to more than five years. Perry and Campbell had worked there for 4 and 5 years, respectively. Brown had been in the department since July 12, 1999, and Harrison since 2001.

Angela Kyler, testified that she supervised the check-in department from the year 2000 up until October 2002. In May 2002, at the occasion of the Company's annual audit, she reminded her staff, to make sure that the verification was happening, and that she wanted two initials on the deposit slips. Nevertheless, the employees still did not verify each others' deposits. For example, Campbell who was the most senior clerk in the office, and who had trained Harrison to become familiar with her job duties, admitted that she never obtained a second initial on her deposit slips. The record contains copies of her deposits for the years 2002 and 2003. The slips show only Cambell's own initials (GC Exhs. 17, 18). A number of her deposit slips were not initialed at all (GC Exhs. 21, 22). Yet Campbell was never disciplined for failing to follow company policy.

Dawn Perry testified that, with few exceptions, she had her deposits verified and initialed by a fellow employee. According to Perry, that practice began when Ann Wood supervised the department, and that prior to that time the clerks had placed their own initials on the deposits. The record, however, contains a number of deposits processed by Perry which contain co-workers' initials which may not be authentic. Many of her deposit slips, for example, contain her own initials, and Harrison's initials as well (GC Exhs. 13, 14). Yet Harrison testified that she never verified her coworkers' deposits, and that she never placed her initials on any of Perry's deposit slips. Harrison also described during her testimony that her actual initials were different in appearance from the ones shown on Perry's deposit slips, and that she did not recognize her initials on Perry's deposits. Indeed, Harrison and Brown testified that they never saw any of the check-in clerks verify each others' deposits. The employees would have known, because they worked in such close proximity of one another.

Clearly, Campbell, Brown and Harrison failed to follow company policy to have their deposits verified. Only Perry claimed to have complied with company policy. Brown and Harrison admitted that they had placed the initials of a coworker on their deposit slips.

This practice went on for years without management's approval or disapproval. Indeed, the cash handling policy was never reduced to a written policy, and never formally communicated to the check-in clerks. Auld, director of business operations, admitted that management had not been diligent to ensure compliance with the policy, so that deposit slips had slipped by or only had one signature (Tr. 504). Yet when management discovered what Brown had openly admitted, namely that she had placed a coworker's initial on her deposit slip without prior verification of that coworker, and that Harrison had done the same, she and Harrison were summarily discharged for falsifying documents.

The events leading up to the terminations, began on September 9, 2003, when Andre Hicklen, accounting coordinator whose job it is to balance the money that's coming in and to verify all balances out, discovered that Sharon had a couple of deposits that were missing (Tr. 1706-1707). He promptly notified his supervisor, Ann Wood, business operations manager, who supervised the check-in department from October 2002 to February 2003. Wood and Hicklen went to the check-in department and to the desk of Sharon Brown. She was absent at the time on disability leave from August 28, 2003 to September 16, 2003. Wood found the deposit slips for the missing deposits on Brown's desk. The slips showed two sets of initials, Brown's and Harrison's. Wood asked Harrison about the deposits. Harrison said that she had not signed the deposit slips, but that she believed that the deposits were in a safe. Wood did not find the money in the safe and called Brown at her home. Brown decided to come to the office, and discovered the two bags, a check bag and a cash bag, in her desk drawer, which had been locked. Brown blamed the inadvertence on having been on medication at that time. In any case, she was not reprimanded for this, and the money was duly deposited without any further incident on September 11, 2003.

A week later, on September 16, 2003, Wood met with Harrison and Brown individually to question them about the initials on the deposit slips. Initially, Brown and Auld met with Harrison. Wood asked Harrison whether she had signed Brown's deposit slips. Harrison responded that the initials on Brown's deposit were not hers, but that it was a common practice to place a coworker's initial on the deposits. Auld expressed his concern that they weren't counting after each other, and indicated that the employees needed to be reminded of the verification policy. On the same day, Wood and Auld met with Brown and similarly questioned her about the initials on her deposit slips. Brown also stated that clerks signed each other's initials. Wood testified that she was shocked. She discussed her findings with Auld and informed True of the possibility of having to fire the entire department.

Wood also met with Perry and Campbell on September 16, 2003, to discuss the verification process. But unlike her interrogation of Brown and Harrison, Wood did not ask them whether they had forged the initials of coworkers on their deposit slips, nor was Auld present at that meeting. Thereafter, Wood and Auld decided to review all deposit slips for the past 60 days. Wood testified that she completed that process with the assistance of Hicklen on the evening of September 16, 2003. She testified as follows about the results (Tr. 384): I found many instances where Jonnie Harrison had written Joy Campbell's initials. I found many instances where she had written Sharon Brown's initials, and I found many instances where Sharon had written her coworkers' initials as well. When asked whether she found instances of Perry initialing other peoples' signatures, Wood replied that she did not find any instances of that. Wood also found that Campbell's deposits showed only one set of initials, her own, instead of an additional one for purposes of verification. Wood testified that she shared the results of her findings with Auld. They "deemed that it was falsification of our company policy, that it was intentional to get around our procedures, and [they] decided to terminate the two of them" (Tr. 1758). According to Wood, the employees were discharged on September 18, 2003.

Harrison and Brown testified that they were separately called into an office on the second floor of the human resources department on September 17, 2003. When Harrison met with Wood, also present were Christine Hardy, human resources specialist, and Kay Harklerow, human resources manager. Wood handed Harrison a termination letter, stating that she was terminated for falsifying documents. Wood also showed her several of her deposit slips. Harrison was stunned and attempted to offer an explanation. Wood then met with Brown, handed her the termination letter on September 17, 2003,and said Sharon, as we spoke yesterday about the initials on the deposit slip, I am terminating you as of today for falsifying documents (Tr. 747). Prior to this, the two employees had never been disciplined during their tenure and received good evaluations (GC Exhs. 37, 38).

In its brief, the Respondent repeatedly attacked the credibility of Brown and Harrison as witnesses, even their testimony about the date of their discharge. Aside from minor inaccuracies with dates or names, I found nothing in their demeanor suggesting that they distorted the true facts while testifying about this incident. Indeed their testimony was generally consistent and plausible. The testimony of Wood and Kyler, on the other hand, was not as reliable and consistent, as for example, Kyler's claim that in 2002, she initiated the requirement for two initials on deposits. Wood and Auld recalled that the policy was in effect much earlier.

The General Counsel argues that an 8(a)(1) and (3) violation has been established under *Wright Line,* 251 NLRB 1083 (1981), enfd. 662F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), by a showing that (1) the employees engaged in protected activity, (2) the Respondent had knowledge of their union activity, (3) the employees suffered adverse consequences because of the employer's anti-union animus, and (4) a causal connection or nexus has been shown between the adverse action and the employee's union activities. With respect to the first element, the Respondent has stipulated to Brown's union support, as well as the Respondent's knowledge thereof prior to any adverse action against her (Tr. 99-100). Moreover, the record shows convincingly that Brown had engaged in union activities in the union campaign in 2002, and that she supported the Union again in 2003. Brown called fellow employees on behalf of the Union, she met with them at local restaurants, distributed union materials, and passed out union authorization cards to employees. She was observed by management, John Molvin, in August 2003, speaking to prominent union supporter, Myers, and told not to associate with him.

Harrison spoke to the other clerks in the check-in department in support of the Union, she attended mandatory management meetings where she spoke up in favor of the Union in the presence of her supervisor, Wood. During the second meeting in the summer of 2003, she challenged Wood's remarks to the employees about the dire consequences of a union. She said that she had worked in a union environment before, and that Wood's comments were incorrect. She then offered to bring in a union member to prove the point.

Clearly management had gained knowledge of each individual employee's union sympathies in management meetings, where supervisors were asked to identify union supporters. General Manger True testified that management conducted straw polls in 2003, as it had done during the union campaign in 2002, to find out who among the employees was for or against the Union. True testified (Tr. 124-25): Our supervisors talk to our employees all the time. So our supervisors have knowledge of individual employee issues in terms of what they care about, and so conversations are always going on. She also conceded that such issues included topics about the union campaign. Moreover, in August 2003, True invited Campbell to a lunch where the Union was discussed and where she asked what the employees in check-in department wanted. Campbell informed her that the clerks wanted more money, and that Harrison wanted a coffee machine in the office. A week or so later, a coffee machine was installed in the department. With management's constant monitoring of the employees' union sentiments in employee meetings and in management meetings, the Respondent had gained a good idea who among the four employees in the check-in department supported the Union and who opposed it. Campbell and Perry had emphatically and openly opposed the union campaign, and made it clear that they did not favor the Union. Campbell testified that she frequently voiced her opposition to the Union and was quite vocal about it when she attended four or five meetings with management.

The General Counsel has accordingly demonstrated the second element in *Wright Line*, as well as the third, namely that Brown and Harrison suffered adverse consequences when they were discharged, effective September 18, 2003. The next question is whether the record supports a finding of an unlawful motive. Discharges occurring during the height of a union campaign, along with independent violations of the Act, are often sufficient to establish an unlawful motive. *Masland Industries,* 311 NLRB 184 (1993). Furthermore, it is clear that even in the absence of antiunion animus, unlawful motivation may be proven by an inference drawn from evidence of blatantly disparate treatment. *The New Otani Hotel & Garden,* 325 NLRB 928 (1998). Clearly, it cannot be gainsaid that the employees were subjected to disparate treatment. Even though the evidence clearly shows that three of the four clerks did not follow the Company's verification procedure, the two union supporters were fired and the two who opposed the Union were not disciplined in any way. Campbell had clearly violated company policy by her failure to have a second set of initials for verification purposes, or to have any initials at all. The employee handbook defined "Violation of any departmental or Company rule" as misconduct which may result in disciplinary action, including termination for repeated misconduct (R. Exh. 4). Perry's claim that she had her deposits verified is inconsistent with the testimony of the other clerks that none of them had complied with company policy. Wood's cursory review of all deposit slips during one evening may have convinced management of Perry's compliance, but the entire scenario should have raised sufficient doubts in Wood's mind to pursue the issue.

Moreover, when Wood had decided to conduct an investigation on September 16, 2003, 1 week after the missing deposit had been processed, she called the discriminates individually to her office and questioned them specifically about their adherence to company policy. Brown admitted her failure to comply and Harrison made similar concessions, albeit reluctantly. In contrast, Perry and Campbell were jointly called into the office. On that occasion, Auld was not

present. And neither of them was interrogated about the handling of the verification procedure, or whether they had forged the initials of another employee. They were simply reminded to comply with the proper cash handling procedure. Following Wood's perusal of the deposit slips, the union supporters were promptly discharged, while the ones opposing the Union received not discipline at all.

The timing of the discharges during the height of the union campaign, shortly before the filing of the union petition on October 3, 2003, raises additional support for an inference of unlawful motivation. The discharges of the two known union supporters may have had a chilling effect on the entire union campaign.

Based on the foregoing considerations and my findings of the facts underlying the Respondent's conduct, I find that the General Counsel has made out a prima facie case of violation and a showing of unlawful motivation and discrimination. At this point, the burden switches to the Respondent to show that it would have taken the same actions even in the absence of any union activity. The Employer's rebuttal burden is substantial. *Desert Aggregates*, 340 NLRB No. 170 (2003). In this regard, I further find that the Respondent has failed to carry that burden.

Mindful of Respondent's argument that the incident, which precipitated Wood's review of the verification procedure and which revealed the employees' falsification of documents, was not union related, I remain convinced that the two highly regarded employees would not have lost their jobs, but for union considerations. The policy was never enforced until this incident arose during the 2003 union campaign. The Respondent's longstanding disregard of its verification policy and the casual announcements of that policy, clearly show that initials on deposits and verification by a second clerk were of low priority to management and considered relatively meaningless and unimportant. Indeed, so unimportant, that Campbell who clearly violated the policy escaped without any discipline, and that Perry's deposits were accepted at face value without questions asked. In making a determination whether the proffered reasons were that actual ones, the Board may consider the insubstantial nature of the alleged misconduct. "[I]f an employee is a good worker and his breach of the work rules trivial, the more rational explanation for discharge may be invidious motivation." *Detroit Paneling Systems,* 330 NLRB 1170 (2000). Supporting this conclusion were the uninhibited responses by Brown and Harrison, readily admitting their initialing practice in a manner suggesting their pro forma compliance with company policy, rather than an attempt to deceive. Under these circumstances, I find that the Respondent has failed to rebut the General Counsel's case, and that the Respondent violated the Act.

The Discharges of Andrew Williams and Mark Edmonds

On March 23, 2004, the Respondent discharged Andrew Williams and Mark Edmonds, allegedly for falsifying company records in connection with the Company's blind audit procedure. According to the General Counsel, the record suggests a finding that the Respondent was motivated by antiunion animus, because Williams and Edmonds had participated in the 2003 union campaign.

The record shows that Respondent's director of human resources, Samantha Callahan, who had been appointed to the Lanham Office in January 2004, initiated an investigation of the blind audits in March 2004. The procedure, as explained in detail in a memorandum, dated March 3, 2003, required field employees to record the active addresses for at least eight accounts in order to validate the accuracy of the subscriber base and to identify and disconnect illegals (GC Exh. 20). Callahan testified that she "went on some ride-outs with some field

technicians" to become familiar with the blind audit procedure (Tr. 574). She also attended an all-employee meeting in 2003 when the program was announced to the technicians. She became aware that the procedures were time consuming and difficult for the technicians because of their regular workload. In early March 2003, she obtained information which caused her to investigate the employees' compliance. She testified as follows (Tr. 579):

> I received some duplicated blind audit sheets from Cristine Hardy, who reports to me in human resources, and she had received those sheets from Eric Smith. --- I received two blind audit sheets for Ronnie Myers that were duplicates, handwritten duplicates. I received two blind audit sheets for Lewis Estep that were photocopy duplicates. And three sheets for Andrew Simms that were not duplicates, but were the same tag number repeated on the sheet.

Callahan in consultation with Leila True decided to review the blind audit sheets turned in by all 62 technicians for the period of January 1, 2004 to March 2004. Hardy and Kay Harklerow, human resource manager, assisted in reviewing what she estimated to be a thousand pages of reports. Callahan explained in great detail how she initially started looking for sheets that were exact duplicates and how she sorted the blind audit reports by the technicians' tag numbers. Within each technician number she sorted them alphabetically by street name. She then entered the data into a spread sheet to determine whether any duplicate blind audit reports had been submitted by a technician. The entire review took about two weeks.

Callahan discovered that nine individuals had submitted duplicates: Lewis Estep, Andrew Williams, Andrew Simms, Mark Edmonds, Darrick Lyons, Andrew Neely, Troy Dodson, Larry Shannon, and Ronnie Myers. Callahan decided to meet with the nine technicians who were found to have submitted duplicate tag numbers. She testified that she interviewed nine people who had at least one duplicated blind audit sheet or multiple tag numbers listed at different addresses. Seven of them had duplicated sheets and two of them had the same tag number at different addresses. She prepared a written set of questions to be asked during her interviews (GC Exh. 34). On the first day, March 22, 2004, and with the help of the blind audit questionnaire, Callahan and Auld began questioning the individuals and made handwritten notations of the employees' responses. They were, Dodson, Williams, Myers, and Lyons. In addition, each of the candidates was asked to prepare a written statement justifying their conduct (R. Exhs. 54-86). The process continued on March 23, and March 24, 2004, with the remaining five candidates, Simms, Neely, Estep, Shannon, and Edmonds. The employees were allowed to prepare their written explanations at home.

As a result of the investigation, three technicians were discharged, Williams, Edmonds and Estep. The others received a lesser form of discipline. Callahan's lengthy testimony about the conduct of her investigation was supported by documentary evidence in the form of the blind audit questionnaires and the candidates' written responses (R. Exhs. 22-45). In Callahan's words, the results were as follows (Tr. 1392):

> Lewis Estep, Andrew Williams and Mark Edmonds were the three that we terminated. Basically, anybody who had a plausible explanation for the inconsistencies that we found received a verbal warning. The people who admitted that they falsified or that they were not following policy were terminated.

Williams was terminated effective March 24, 2004. When asked whether he may have placed tag numbers on a blind audit form that did not match the address, Williams testified (Tr. 10035): "It could be. This might have been one of the days where I was overwhelmed with

work and I just wrote tag numbers down but no address." He conceded that he may have done the same thing in the past (R. Exh. 41). He did not deny that he had submitted the blind audit sheets which were the subject of Callahan's review. He was given an opportunity to explain his action in writing. The termination letter, dated March 24, 2004, states, inter alia (GC Exh. 36, R. Exh. 42):

> This memorandum will serve to document the decision to terminate your employment with Comcast effective March 24, 2004.
>
> Between January 31st and March 2nd, 2004, you submitted 16 separate blind audit worksheets which show the same 15 tag numbers repeating at multiple addresses. In an interview with you on March 22, 2004, you indicated that, although there was only one address listed at the top of each of your blind audit sheets, those tag numbers were actually from multiple addresses taken directly from your work orders for that day. Your actions are a violation of the Comcast Employee Conduct policy, specifically falsification of company records.

On March 24, 2004, Callahan met with Williams, and in the presence of his supervisor and Auld, she explained the situation and gave him the termination letter. Williams had otherwise a good work record.

Edmonds was similarly interviewed on March 23, 2004, by Callahan and Auld. They asked Edmonds why he had submitted blind audit sheets on two occasions which contained the same information. Edmonds excused his actions by blaming a heavy workload and too much pressure to finish his regular assignments. Edmonds submitted a written statement providing the same explanation (GC Exh. 42). On the following day, Callahan and Auld met with Edmonds and told him that he had falsified documents and that was no longer needed. His termination letter provides, inter alia, as follows (GC Exh. 36):

> This memorandum will serve to document the decision to terminate your employment with Comcast effective March 24, 2004. An investigation into the blind audit worksheets showed that you submitted several similar blind audit worksheets between February 2nd and March 3rd, 2004 for addresses on Queens Chapel Rd, Ager Road, Kaywood Drive, and Belcrest Plaza. In an interview with you on March 23, 2004, you indicated that you had recopied this information from previous sheets without reconfirming the information. Your actions are a violation of the Comcast Employee Conduct policy, specifically falsification of company policy.

Edmonds did not deny the accusations, but expressed his surprise and suggested that he be reprimanded. Edmonds like Williams had a good work record.

Estep, who did not challenge his discharge, was similarly terminated on March 24, 2004. Callahan and Auld also met with the other six technicians. They each received a lesser form of discipline, in the form of a corrective action notice, dated April 12, 2004 (GC Exh. 26).

The General Counsel has attacked the fairness of Callahan's review of the blind audit sheets and argues that the nine technicians who were singled out for disciplinary action were all union supporters, that three other technicians, who were not union supporters and had engaged in similar misconduct, were not disciplined. Callahan's investigation had omitted Edgar Lopez, Gavin Morgan, and Ricky Morgan who had submitted blind audit sheets which contained duplicate information. During the hearing, Auld was presented with a blind audit sheet submitted by Ricky Morgan. Auld conceded during his testimony that "the first seven tag numbers

duplicate the sheets from February 10, 2004" (Tr. 1797). Lopez' blind audit sheet showed duplication of one or two tag numbers on the same sheet. Callahan testified that she did not interview him, because she "was looking for complete sheets that were the same, that had the same tag number" (Tr. 1425). According to the General Counsel, Ricky Morgan, Gavin Morgan, and Lopez were opposed to a union. The Respondent's discriminatory motive is also apparent, according to the General Counsel, by the failure to identify technicians "who frequently failed to do blind audits" and those who filed incomplete reports.

The General Counsel accordingly argues that a prima facie case under *Wright Line* has been established, that Williams and Edmonds were singled out for adverse action, because they were known by management to be union activists. The General Counsel's prima facie case is essentially predicated upon a showing that Edmonds and Williams were two out of nine prounion technicians targeted for disciplinary action, as a result of the blind audit review, and that three technicians who were opposed to the union were omitted. To be sure, the record shows that Edmond and Williams had supported the Union. Indeed, the Respondent stipulated that management was aware of the union activities of three technicians Williams, Estep, and Myers prior to any adverse action. Edmonds testified that he participated in the union campaign, that he frequently spoke out in favor of the Union in the presence of supervisors at employee meetings and at lunch meetings at Applebee's. Williams and Edmond attended union meetings, passed out union cards and were certainly perceived as prounion employees in straw polls conducted by management. Clearly, Williams and Edmond suffered adverse action. The General Counsel has therefore established the first two elements under *Wright Line.*

However, I cannot find that a firm prima facie case has been established, and that union considerations were a motivating factor. On its face, the Respondent's review of the documents appears to have been fair and thorough. There is no suggestion that the Company's accusations against these employees were wrong. Edmond and Williams acknowledged their misconduct. The Respondent disciplined other employees as well, discharging Estep for similar misconduct and reprimanding six other technicians for lesser violations. Moreover, the record does not support a finding that Ricky Morgan and Gavin Morgan, who were omitted from the blind audit review, were opposed to the Union. According to the testimony of Leland Sudberry, a service technician, the two employees had actually supported the union campaign. Callahan's investigation, therefore, missed two union supporters and one antiunion employee, Lopez. The suggestion that the investigation was biased is therefore not persuasive. In any case, Callahan impressed me as a witness who was knowledgeable about the subject and who appeared certain about the accuracy of her investigation. She had a difficult and complex task in reviewing a thousand or more documents, and an error in that process does not necessarily suggest an unlawful motive.

In comparison to the verification procedure in the check-in department, the blind audit program was regarded by the Company as a far more serious initiative. The Respondent experienced initial resistance by some technicians to comply with the program, they occasionally failed to complete blind audit sheets or filed incomplete information. In January 2004, the Respondent began to counsel their technicians and in some cases issued reprimands. The Company instituted an incentive program whereby technicians were awarded productivity points. For example, a technician was awarded one point for the first blind audit sheet and two points for each additional sheet per day, to a maximum of five points. The results were used in the employee's performance evaluations. It was obviously important to the Company that the technicians' reports were accurate. On balance, I find little, if any, evidence of disparate treatment of the two employees. My finding in this regard is supported by the timing of the adverse action against them which occurred 4 months after the union election.

Even if the General Counsel had made out a prima facie case, the Respondent has carried the burden that the employees would have been disciplined in the absence of any union considerations. The employees had clearly violated company policy, as defined in Comcast's employee handbook. The information leading to the investigation came from the ranks of employees in the check-in department and ultimately reached Callahan, whose review disclosed the incorrect blind audit sheets. The Company has taken similar action against employees in the past, when it discovered reports or other documents which contained falsified information. I therefore dismiss these allegations in the complaint.

The Failure to Promote Ronnie Myers

In January 2004, the Respondent posted a job opening for a Lead Technician in the Lanham location (GC Exh. 30). The posting described in detail the job responsibilities and the minimum requirements. Arnold Jones, supervisor, encouraged Ronnie Myers to apply for the job. Nine candidates, including Myers, applied. Eric Smith, technical operations manager, interviewed the applicants. Each interview lasted about 20 to 25 minutes and focused on the skills of the applicants including the ability to understand blueprints. Myers was interviewed on February 11, 2004. During the Interview, Smith asked him why he thought he was the best man for the job. Myers replied that he had a good rapport with his coworkers, and that he had passed a Comm Tech III test. On March 1, 2004, Smith informed Myers that he had narrowed his selection down to four or five applicants, but that Myers was not among them. Smith also indicated that the job required a comm tech IV certification. Later in March 2004, Myers had a telephone conversation with Thomas Jefferson. The conversation was overheard by Myers' wife. Myers wanted to know why he was not chosen for the position. During the ensuing conversation, Jefferson said (Tr. 1221): I'm going to give it to you straight, man. You didn't get it because you favor the Union. The Respondent characterized the conversation as fictitious. I credit Myers' testimony, primarily because it was corroborated by his wife's testimony. She had overheard the late night conversation between Jefferson and her husband.

The Respondent finally selected Michael Wong, a communications technician, for the position.

The General Counsel argues that Myers was not selected, because he was a union activist and the principal union ringleader in the 2002 and the 2003 campaigns. The Respondent had stipulated, that it was aware of Myers' union activities prior to any adverse action taken against him. His leading role in that regard is not contested. That his rejection for the promotion is considered an adverse action under *Wright Line* is also clear. However, I cannot find that Jefferson's remark was the true reason for the Company's selection of another candidate.

The record does not show that the selection process was discriminatory or unfair. All candidates were interviewed and considered. Myers may have met the minimum requirements according to the announcement, but he faced stiff competition from the eight other contestants. To the contrary, the record shows that several other candidates possessed higher skills. Myers testified, for example, that he intentionally failed to pursue a higher level of expertise as a comm tech II (Tr. 1166): "I never got certified because I didn't feel like – the money didn't come with the Job, so I didn't want to get certified."

According to Smith, Myers lacked the necessary skills regarding blueprints, and he was not proficient in on-line installation and maintenance experience. Smith selected three finalists, Leland Sudberry, Oral Cox, and Michael Wong. They were interviewed by someone named, Calvin Johnston, who selected Wong as the most qualified applicant. Several coworkers, Brian

Mays and Oral Cox, who had competed for the same position, and William Thompson, who was familiar with Myers' work, testified that Wong, a comm tech III, was a superior candidate. Wong recited his background, that he is a college graduate, that he holds a computer hardware and software certification from Microsoft and that he has extensive working experience abroad. He had the required online experience, and was regarded as proficient in the system blueprint. My review of the record, dealing with the comparative qualifications of the applicants, does not support a finding that Myers was the victim of discrimination.

The sole basis for a finding of discrimination would have to rest on the remark by Jefferson that union considerations had played a role. Although I find that Jefferson's remark to the effect that promotions were denied because of union considerations, amounted to a threat, I cannot find that the Respondent's failure to promote Myers was motivated by antiunion animus.

Conclusions of Law

1. The Respondent, Comcast of Maryland, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union # 639, a/w International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Creating the impression among the employees that their union activities were under surveillance.

(b) Making coercive statements, that management was angry that employees were trying to organize and that a supervisor was to take names and kick butt.

(c) Coercing employees and instructing them not to talk to union adherents.

(d) Coercively interrogating employees as to why they needed a union.

(e) Disclosing to employees that management knew of the union meetings, and creating the impression of unlawful surveillance.

(f) Making coercive statements to union supporters that they should look for jobs elsewhere.

(g) Threatening employees with more onerous working conditions and threatening them with loss of benefits if the employees selected the Union.

(h) Coercively interrogating employees about their union sentiments.

(i) Threatening employees with increased discipline if they selected the Union.

(j) Threatening employees to be careful with Comcast or face unspecified reprisals and increased discipline.

(k) Coercively telling employees that they were not selected for promotion because of their union support.

4. By discharging its employees Sharon Brown and Jonnie Harrison, because of their union activities, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The other allegations have not been substantiated.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily discharged Johnnie Hanson and Sharon Brown, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to date of proper offer of reinstatement, less any interim earnings, as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interested as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Comcast of Maryland, Inc., Lanham, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any employees because of their union activities.

(b) Creating the impression that union activities are under surveillance.

(c) Making coercive statements that management was angry about the employees' organizing efforts or that management would take the names of union supporters and kick butt.

(d) Coercing employees and instructing them not to talk to union adherents.

(e) Coercively interrogating employees as to why they needed a union.

(f) Disclosing to employees that management knew about their union activity and creating the impression of unlawful surveillance.

(g) Making coercive statements to union supporters that they should look for jobs elsewhere.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(h) Threatening employees with more onerous working conditions and threatening them with loss of jobs if the employees selected the Union.

(i) Coercively interrogating employees about their union sentiments.

(j) Threatening employees with increased discipline if they selected the Union.

(k) Threatening employees to be careful with Comcast or face unspecified reprisals.

(l) Coercively telling employees that they would not be promoted because of their union support.

(m) In any like or related manner interfering with restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Sharon Brown And Jonnie Harrison full reinstatement to their former jobs or if the jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Sharon Brown and Jonnie Harrison whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify the employees in writing that this has been done and that the [discharge will not be used against them in any way.

(d) Within 14 days after service by the Region, post at its facility in Lanham, Maryland , copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to all current employees and former employees employed by the Respondent at any time since August 1. 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent had taken to comply.

Dated, Washington, D.C., April 13, 2005.

_____
Karl H. Buschmann
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge any employees because of their union activities.

WE WILL NOT create the impression that union activities are under surveillance.

WE WILL NOT make coercive statements that management was angry about the employees' organizing efforts or that management would take the names of union supporters and take adverse action.

WE WILL NOT coerce employees and instruct them not to talk to union adherents.

WE WILL NOT coercively interrogate employees as to why they need a union.

WE WILL NOT disclose to employees that management knew about their union activity and create the impression of unlawful surveillance.

WE WILL NOT make coercive statements to union supporters that they should look for jobs elsewhere.

WE WILL NOT threaten employees with more onerous working conditions or threaten them with loss of jobs if the employees select the Union.

WE WILL NOT coercively interrogate employees about their union sentiments.

WE WILL NOT threaten employees with increased discipline if they select the Union.

WE WILL NOT threaten employees to be careful with Comcast or face unspecified reprisals.

WE WILL NOT coercively tell employees that they would not be promoted because of their union support.

WE WILL NOT in any like or related manner interfere with restrain, or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, offer Sharon Brown And Jonnie Harrison full reinstatement to their former jobs or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sharon Brown and Jonnie Harrison whole for any loss of earnings and other benefits suffered as a result of the discrimination against them with interest.

WE WILL within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

COMCAST OF MARYLAND, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-3113.